

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Eugene R. Boos,

Civ. File No. 07-4316 (PAM/JSM)

Petitioner,

v.

ORDER

Joan Fabian,

Respondent.

This matter is before the Court on Petitioner's Motion for Relief from Judgment pursuant to Federal Rule of Civil Procedure 60(b)(6). In this Motion, Petitioner seeks reconsideration of this Court's Order dated November 21, 2007, denying his Objections to the Report and Recommendation ("R&R") of United States Magistrate Judge Janie S. Mayeron, dated October 26, 2007. In the R&R, Magistrate Judge Mayeron recommended dismissal of Petitioner's request habeas corpus relief.

Petitioner seeks relief from that judgment, alleging that extraordinary circumstances prevented him from discovering the State's allegedly unconstitutional application of Petitioner's good-time credits. As noted in the R&R and in the previous Order, the one-year limitations period on habeas corpus proceedings imposed by 28 U.S.C. § 2244(d) elapsed long before the instant challenge. Thus, the Magistrate Judge concluded, and this Court agreed, that the federal court is barred from hearing challenges to Petitioner's conviction and sentence.

While Petitioner is correct that extraordinary circumstances can justify relief from the one-year limitation period of § 2244(d), the Court found that he had failed to demonstrate the

existence of such circumstances in his case. The Court is not unsympathetic to Petitioner's arguments that there was no constitutional violation until the allegedly unconstitutional application of good-time credits began, long after the running of the statute of limitations in this matter. However, even if the Court were to reach the merits of Petitioner's claims, Petitioner is not entitled to habeas corpus relief. As the Magistrate Judge noted, it appears that Petitioner did not present his constitutional arguments to the state courts, and thus he failed to exhaust his remedies with respect to those arguments. See 28 U.S.C. § 2254(b)(1)(A) (the "application for a writ of habeas corpus . . . shall not be granted unless it appears that the applicant has exhausted the remedies available in the courts of the State"). Petitioner's Application was properly dismissed.

Accordingly, **IT IS HEREBY ORDERED** that Petitioner's Motion for Relief from Judgment (Docket No. 6) is **DENIED**.

Dated: December 11, 2007

s/ Paul A. Magnuson
Paul A. Magnuson
United States District Court Judge